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STATE OF SOUTH CAROLINA

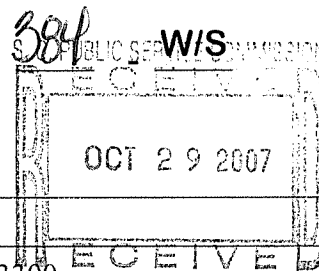
(Caption of Case)

Application of Carolina Water Service, Inc. for approval of a contract with Ashworth Development Company and Hitchens Development Company, d.b.a. Heron Cove Joint Venture to serve Evergreen Subdivision

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET  
NUMBER: 2007



(Please type or print)

Submitted by: John M.S. Hoefer

SC Bar Number: 2549

Telephone: 803-252-3300

Fax: 803-771-2410

Address: Post Office Box 8416

Columbia, SC 29202

Email: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input checked="" type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input checked="" type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

Print Form

Reset Form

**WILLOUGHBY & HOEFER, P.A.**

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY  
JOHN M.S. HOEFER  
ELIZABETH ZECK\*  
RANDOLPH R. LOWELL  
BENJAMIN P. MUSTIAN  
M. McMULLEN TAYLOR

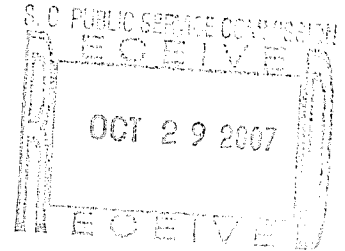
AREA CODE 803  
TELEPHONE 252-3300  
TELECOPIER 256-8062

TRACEY C. GREEN  
SPECIAL COUNSEL

October 23, 2007

\*ALSO ADMITTED IN TX

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
Post Office Box 11649  
Columbia, South Carolina 29211



RE: Application of Carolina Water Service, Inc. for approval of a contract with  
Ashworth Development Company and Hitchens Development Company,  
d.b.a. Heron Cove Joint Venture to serve Evergreen Subdivision

Dear Mr. Terreni:

Enclosed for filing are the original and ten (10) copies of the Application of Carolina Water Service, Inc., in the above-referenced matter. I would appreciate your acknowledging receipt of this document by date-stamping the extra copy of this letter that is enclosed and returning it to me in the envelope provided. Also enclosed is a draft notice of filing.

By copy of this letter, I am serving the Office of Regulatory Staff and enclose a certificate to that effect. If you have any questions or need additional information, please do not hesitate to contact me. With best regards, I am,

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**

  
John M. S. Hoefer

JMSH/  
Enclosure

cc: Hon. C. Dukes Scott

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2007-\_\_\_\_\_ -W/S**


IN RE:

Application of Carolina Water Service,  
Inc. for approval of a contract with  
Ashworth Development Company and  
Hitchens Development Company, d.b.a  
Heron Cove Joint Venture to serve  
Evergreen Subdivision

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of the  
**Application** by placing same in the care and custody of the United States Postal Service with  
first class postage affixed thereto and addressed as follows:

The Honorable C. Dukes Scott  
**Office of Regulatory Staff**  
Post Office Box 11263  
Columbia, South Carolina 29211

  
Cindy C. Mills

Columbia, South Carolina  
This 23<sup>rd</sup> day of October, 2007.

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2007-\_\_\_\_\_-W/S**

IN RE: )  
 )  
Application of Carolina Water Service, )  
Inc. for approval of a contract with )  
Ashworth Development Company and )  
Hitchens Development Company, d.b.a. )  
Heron Cove Joint Venture to serve )  
Evergreen Subdivision )  
\_\_\_\_\_ )

**APPLICATION**

Carolina Water Service, Inc. (“Applicant” or “Utility”) hereby submits a contract between it and Ashworth Development Company and Hitchens Development Company, d.b.a. Heron Cove Joint Venture (“Developer”) for consideration by this Honorable Commission under Vol. 26 S.C. Code Ann. Regs. R.R. 103-541 and 103-743 (Supp.2006). In support of this Application, Applicant would respectfully show as follows:

1. Applicant is a public utility currently authorized to operate water and wastewater systems under the jurisdiction of the Commission in York County, as well as certain other counties in this state. Its corporate charter is presently on file with the Commission and an appropriate bond has been posted with same. A schedule of rates and charges for Applicant’s water and wastewater service was approved by the Commission in Docket No. 2004-357-W/S, Order No. 2007-135, March 1, 2007. However, Applicant has other rates and charges in effect under bond pursuant to S. C. Code Ann. §58-5-240 (D) (2006).<sup>1</sup>

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<sup>1</sup> As the Commission is aware, the Commission denied Applicant's request for rate relief in Docket No. 2006-92-W/S in Order No. 2006-543 dated October 2, 2006. Applicant subsequently petitioned the Commission for reconsideration or rehearing of that Order and, on November 27, 2006, the Commission issued a directive denying

2. The Applicant seeks approval of an agreement entered into between Applicant and the Developer dated October 8, 2007 ("Agreement"), a copy of which is attached hereto and incorporated herein by reference as Exhibit "A." Under Article IV, § 1 of the Agreement, Applicant will provide service to the proposed development pursuant to all of the terms, conditions, rates and charges set forth in its existing rate schedule as are on file with this Commission and in effect from time to time.<sup>2</sup>

3. Pursuant to the Agreement, Applicant proposes to serve a residential development to be called "Evergreen Subdivision", which will consist of approximately sixty (60) single family residences when completed. The Agreement provides, *inter alia*, that Developer will construct all of the necessary water and sewer facilities ("Facilities") required to connect the proposed development to Utility's River Hills System, acquire all necessary easements and rights-of-way ("Easements") and convey such Facilities and Easements to Applicant. Performance of the Agreement is conditioned upon its approval by this Commission.

4. The proposed development is within Applicant's Commission authorized Service Area in York County and the area franchised to Applicant by York County. Accordingly, no other public or governmental utility is authorized to serve the proposed development.

5. Upon satisfaction of all terms and conditions of the Agreement, and as provided for under Article II, §14 of the Agreement, Applicant has agreed to reserve adequate utility capacity for up to sixty (60) water and fifty-five (55) wastewater connections located within the Property.<sup>3</sup> Applicant submits that this provision is warranted and in the public interest as it

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that petition, but approving Applicant's request to place rates into effect under bond. No order by the Commission addressing the petition for rehearing has yet been issued, but by Order No. 2007-230, dated April 5, 2007, approval has been given to place the current rates in effect under bond.

<sup>2</sup> Thus, upon any subsequent revisions to rates which may result from any appeal which may be taken from further Commission orders in Docket No. 2006-92-WS, the rates to be charged in the proposed development would change.

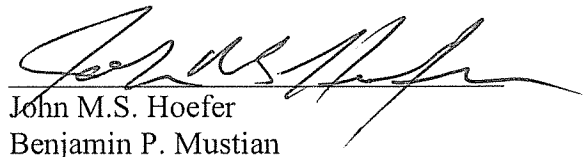
<sup>3</sup> Due to topography, five (5) of the proposed residential lots cannot be served by central sanitary sewer and will have septic tanks.

ensures that the developer will pay for capacity in advance, thereby allowing the utility to adequately engage in planning for operations.

6. Applicant submits that the public convenience and necessity will be served by the approval of this Agreement. Applicant further submits that no hearing in this matter is required. See S.C. Code Ann. § 58-5-240(G) (Supp.2006).

7. All correspondence and communications regarding this matter should be sent to the undersigned.

WHEREFORE, having fully set forth its Application, Applicant prays that the Agreement, be approved; that a hearing on the within matter be waived or review of the within application be expedited, and that Applicant be granted such other and further relief as the Commission may deem just and proper.



John M.S. Hoefer

Benjamin P. Mustian

**Willoughby & Hoefer, PA**

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Applicant

Columbia, South Carolina

This 23<sup>rd</sup> day of October, 2007

**AGREEMENT FOR WATER AND SEWER SERVICE**  
**EVERGREEN SUBDIVISION**  
**YORK COUNTY, SC**

This Agreement is entered into this 9<sup>th</sup> day of OCTOBER, 2007 by and between Ashworth Development Company and Hitchens Development LLC, dba Heron Cove Joint Venture, existing under the laws of the State of North Carolina and authorized to do business in South Carolina (hereinafter referred to as "Developer"), and Carolina Water Service, Inc., a Delaware corporation authorized to do business in South Carolina (hereinafter referred to as "Utility").

**WITNESSETH**

WHEREAS, Developer is the owner of a certain real estate parcel containing approximately 45.34 acres (Tax Parcel No.5620000018 and sections of 5620000011 and 5770000003), and the portion of which is being developed is located adjacent to Forest Oaks and River Hills Communities in Lake Wylie, York County, South Carolina, hereinafter referred to as the "Property" (see "Exhibit 1"); and,

WHEREAS, Developer desires to develop the Property into a residential development to be called "Evergreen Subdivision" which will contain approximately sixty (60) homes when completed; and,

WHEREAS, Utility is a public utility engaged in the business of furnishing water and sewer service to the public in its designated River Hills / Lake Wylie Franchised Service Territory located in York County and Property is located within the service territory. The Utility desires to have constructed and installed, and the Developer desires to construct and install, the water distribution and wastewater collection facilities to serve the Property subject to the terms and conditions of this Agreement; and,

WHEREAS, Developer desires Utility to provide water and wastewater utility service within the Property and Utility desires to provide water and wastewater utility service according to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

**ARTICLE I**

**Representations and Warranties of Developer**

Developer represents and warrants that:

1. Developer is the owner of or is duly authorized to act on behalf of the owner(s) of the

Property; and,

2. Developer will cooperate fully with the Utility in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with the construction and installation of the Facilities contemplated by this Agreement; and,
3. Developer will convey to the Utility or otherwise vest in the Utility such right, title and interest in and to such real estate as may be reasonably necessary to permit the Utility to carry out the terms and conditions of this Agreement; and,
4. Developer will convey to Utility or provide by recorded subdivision plats such easements or rights of way as the Utility may reasonably require for the Utility's performance of its obligations under this Agreement. Any such plats, conveyances or licenses will be in form reasonably satisfactory to Utility's legal counsel.

## ARTICLE II

### Obligations and Construction of Facilities by Developer

#### 1. Facilities

Developer shall construct and install all necessary water distribution and wastewater collection facilities to serve the Property, including but not limited to mains, valves, fire hydrants, service laterals, meter boxes, meters, backflow prevention devices, manholes, lift station(s) (with stationary diesel or natural gas powered generator(s)), force mains, odor control devices, and other facilities as are reasonably required to provide adequate water and wastewater service (hereinafter referred to as the "Facilities"). Water distribution mains will have a minimum diameter of six (6) inches, except where otherwise approved by Utility. Developer shall install and connect to the existing (6) inch water mains providing water service to the adjacent property at points as determined by Utility. Wastewater collection mains will have a minimum diameter of eight (8) inches, except where otherwise approved by Utility. Developer shall install and connect to the existing Forest Oaks wastewater collection system via a force main at a point as determined by Utility.

2. All materials used by the Developer for said Facilities shall be new, first-class, and suitable for the uses made thereof. Developer guarantees all construction, materials, workmanship, and the trouble-free operation of the Facilities (or any portion of the Facilities) for one year after the Facilities (or such portion of the Facilities) are placed in service.
3. All Facilities constructed and installed by Developer pursuant to this Article II shall be constructed and installed without cost or expense to Utility.



4. All plans, specifications and construction of the Facilities shall be in accordance with applicable standards, requirements, rules and regulations of all governmental bodies and regulatory agencies which may have jurisdiction thereover, and shall have received the written approval of Utility before construction is begun, which approval shall not be unreasonably withheld or delayed.
5. Developer shall save and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur in the course of the performance of the construction of the Facilities by Developer or by anyone acting on Developer's behalf, or under Developer's supervision and control, including but not limited to claims made by employees of Developer, and Developer shall, at its own cost and expense, pay all costs and other expenses arising therefrom, or incurred in connection therewith, including reasonable attorneys' fees.
6. Developer shall obtain, with cooperation from Utility, all requisite permits and zoning and other approvals and all else required to construct the Facilities, without cost or expense to Utility.
7. All of the Facilities installed by Developer pursuant to this Agreement shall become the property of Utility as installed, without cost or expense to Utility, with the exception of the service lines for which each residential unit shall retain ownership and maintenance responsibility. Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility as necessary or desirable in its opinion to ensure its ownership of, ready access to, and operation and maintenance of the Facilities. Developer shall furnish Utility with lien waivers in a form reasonably satisfactory to Utility's counsel from Developer and from all suppliers, subcontractors and all other who furnish labor, equipment, materials, rentals, or who perform any services in connection with Facilities construction herein. Developer agrees to provide to Utility documentary evidence, in form satisfactory to Utility, sufficient to establish the original cost of the Facilities. Utility shall have, at all times, all right, title and interest in and to the Facilities.
8. Developer shall not have the right to connect individual lot service connections to the Facilities until such time as the Facilities have been formally accepted by the Utility, written approvals have been received from all governmental bodies and regulatory agencies which may have jurisdiction thereover, and all applicable connection fees have been paid.
9. All connections must be inspected by the Utility prior to backfilling and covering of any pipes. Written notice to the Utility requesting an inspection of a connection shall be made at least forty-eight (48) hours in advance of the inspection, excluding weekends

and official Utility holidays.

10. Should the Developer fail to comply with the foregoing inspection provisions, Utility may refuse service to a connection until such time as the appropriate inspections have been completed.
11. Developer shall, prior to the transfer to Utility of the Facilities, grant permanent, assignable easements satisfactory to Utility, without cost or expense to Utility, authorizing Utility to own, operate and maintain the Facilities throughout the Property and providing reasonably adequate rights of access and working space for such purposes.
12. Developer shall, upon transfer to Utility of the Facilities, provide to Utility as-built drawings, including specific addresses to each platted lot, and all other information (by both hard copy and electronic copy), reasonably required to operate, maintain, and repair the Facilities.
13. Developer shall submit to Utility upon execution of this Agreement a Plan Review Fee of three hundred dollars (\$300) for each phase of the development. Developer shall, prior to the final acceptance of each development phase, or portions thereof, submit to Utility a one hundred fifty dollar (\$150) Inspection Fee. Should the Facilities require additional inspection(s) due to improper installation, defective or unapproved materials, the Developer shall pay one hundred fifty dollars (\$150) for each additional inspection required.
14. Upon Developer's satisfaction of its obligations under this Agreement, Utility agrees to reserve adequate utility capacity for up to sixty (60) water and fifty-five (55) wastewater connections located within the Property.
15. Developer shall pay and deliver to Utility upon the execution of this Agreement the sum of money which is the non-recurring service connection and plant impact fees ("Tap Fees") provided for under Utility's rate schedule, as may be approved by the Public Service Commission of South Carolina and in effect from time to time, multiplied by the Single Family Equivalent ("SFE") rating set forth therein. For the project which is the subject of this Agreement, that sum shall be \$80,500 which is based upon the Utility's current rate schedule. This payment shall be made within ten (10) days of the issuance of a Permit to Construct for the necessary water and wastewater infrastructure from the South Carolina Department of Health and Environmental Control, or within 90 days of the execution of this Agreement, whichever occurs first. Should it be determined that the project contemplated by this Agreement consists of a greater number of SFEs than is estimated hereinabove, then and in that event Developer shall be required to pay an additional sum to Utility for each additional SFE using the calculation provided for

hereinabove. In addition Developer agrees that it will not represent to any third party that utility service is available from Utility for use within the proposed development except (1) upon Developer's payment of the Tap Fees as provided hereinabove, and (2) establishment of service and an account between said third party and Utility, including payment of all fees and charges authorized under the Utility's approved rate schedule excepting tap fees

### ARTICLE III

#### Representations and Warranties of Developer

1. Developer will not, and will not permit by restricted land covenant, any owner of real estate within the Property to construct or maintain any private well in the Property.
2. Neither Developer nor any entity or individual affiliated with Developer has executed or will execute any agreement with any lot purchaser in the Property, or any other parties or made any representations to any such purchasers or other parties whereunder such purchaser or other parties have acquired any interest in Facilities to be installed under this Agreement.

### ARTICLE IV

#### Utility Services, Connection Fees, Rates and Charges

1. Prior to the commencement of utility service, lot owners within the Property are responsible for the payment to Utility of all applicable water and sewer fees, as well as the appropriate York County water and sewer tap-on or service fees at the rate as in effect from time to time prior to the provision of utility service to any lot within the Property. Such fees, usage and all other incidental rates and charges shall be rendered by Utility in accordance with Utility's rates, rules and regulations and conditions of service on file with the South Carolina Public Service Commission (the "Commission") from time to time and then in effect. Capacity shall not be reserved for any lots for which the tap fee has not been paid.
2. Upon installation and acceptance of the Facilities and payment of all applicable connection fees, Utility agrees to supply all customers within the Property with adequate and customary water and wastewater service and to operate, maintain and repair all Facilities as indicated herein, after acceptance by Utility and issuance of operational approvals by all regulatory authorities.

## ARTICLE V

### Commission Approval

1. Within thirty (30) days following the execution of this Agreement, Utility will file a petition with the Commission requesting approval of this Agreement, if necessary. All terms and conditions contained herein are subject to Utility receiving said approvals from the Commission.

## ARTICLE VI

### General

1. Except as provided in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.
2. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
3. The representations, warranties and agreements contained herein shall survive, and continue in effect. Utility agrees to indemnify Developer, its successors and assigns, and hold Developer harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentations or breach of any representation, warranty or agreement on the part of Utility under this Agreement; Developer agrees to indemnify Utility, its successors and assigns, and hold it and them harmless against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer.
4. This Agreement sets forth the complete understanding between Developer and Utility,

and any amendments hereto to be effective must be made in writing.

5. Notices, correspondence and invoicing required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Utility:

Carolina Water Service, Inc.  
2335 Sanders Road  
Northbrook, Illinois 60062  
Attn: Ms. Lisa Crossett  
Chief Operating Officer

If to Developer:

Heron Cove Joint Venture  
Attention: Mr. John Maxwell  
P.O. Box 6122  
Charlotte, NC 28207

Delivery when made by registered or certified mail shall be deemed complete upon mailing. Delivery by overnight courier shall be deemed complete when delivered.

6. This Agreement may not be assigned by Developer without the written approval of Utility, which approval shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
7. This Agreement shall be governed by the laws of the State of South Carolina.
8. If this Agreement is not executed prior to September 30, 2007, then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party.

[Signatures Begin on the Following Page]

IN WITNESS WHEREOF, the parties hereto have set their seals the day and year above first written.

Carolina Water Service, Inc.

By: [Signature]  
Its: VICE PRESIDENT

Attest:

1) Ronnie Starns  
2) Bruce L. Haas

Heron Cove Joint Venture

By: [Signature]  
Its: Resident Developer  
[Signature]  
MANAGER - HITECHENS DEVELOPMENT LLC

Attest:

1) John Maxwell  
2) Lozallen Mayfield

TABLE 1. *Continued*

